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February 24, 2022

VIA ECF

The Honorable Denise Cote
United States District Judge
Southern District of New York
Daniel Patrick Moynihan US Courthouse
500 Pearl Street, Room 1910
New York, NY 10007

Re: Second Consent Motion to Extend Deadlines to Move for Substitution and to
Move for Reconsideration of the Order of Dismissal [DE 41]
Franklin v. Cona Elder Law, PLLC, et al., No. 1:21-cv-04810-DLC

Judge Cote:

The undersigned represented Plaintiff Alphonso Franklin in the above-captioned case against Defendants Cona Elder Law, PLLC (“Cona”), a law firm that collects debts for nursing homes, and Wartburg Home (“Wartburg”), a nursing home, for their violations of the Fair Debt Collection Practices Act (FDCPA) and related state laws.

Unbeknownst to our office, Alphonso Franklin passed away on or a few days prior¹ to Your Honor’s January 28, 2022 Order dismissing the FDCPA claims with prejudice and the state law claims without prejudice [DE 41]. Late on February 11, 2022, Delvin Franklin, Mr. Franklin’s only son, retained our office as counsel. Delvin Franklin is, upon information and belief, the sole distributee of Mr. Franklin’s estate, and he will soon be moving in Surrogates Court in the Bronx to be appointed administrator of the estate. However, based on another matter our office handled requiring the probate of an estate and based on our conversation with an attorney who regularly handles probate proceedings in New York City, it could be 6 months or more until Delvin Franklin’s application is processed.

Thus, our office requested that the deadline for substitution be extended from 90 days after the suggestion of death to 180 days after the suggestion of death, until August 10, 2022. We also requested that the deadline to move for reconsideration of the Dismissal [DE 41], which is today, February 11, 2022, be tolled until 14 days after there has been a ruling on the anticipated Motion for Substitution pursuant to Fed.R.Civ.P. 25(a).

Defendants have consented to the relief requested in this application. This is movant’s second application for this relief.

Your Honor denied our application without prejudice to renew by February 25, 2022 upon a showing that Delvin Franklin has filed the motion to be appointed administrator. DE 44. Accordingly, please see **Exhibit A**, the Petition for Administration filed by Delvin Franklin by and through his probate attorney Judah Schwartz regarding his late father Alphonso Franklin’s

¹ The death certificate states the date of death as January 28, 2022, the date Alphonso Franklin’s body was discovered. Apparently Alphonso Franklin had actually passed away a few days prior.

estate. Attached to the Petition is the email confirmation of filing of the Petition generated by the Bronx County Surrogate's Court electronic filing system.

We thank the Court for its consideration.

Respectfully,

/s/

Emma Catherine, Esq.

The plaintiff's time to move for reconsideration
of the 1/23/22 Opinion is extended until
14 days after the appointment of an administrator
for the plaintiff's estate, assuming Nelson
Franklin demonstrates diligence in
pursuit of his 2/24 petition for appointment.
A status letter is due 6/1/22.

James Cole
2/25/22